



## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Agency Information Collection Activities for Prevailing Wage Determination

#### Information Collection

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor’s (Department) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision to the information collection request (ICR) titled “Application for Prevailing Wage Determination” (OMB Control Number 1205-0508), which covers Forms ETA-9141 and ETA-9141 Appendix A, and the accompanying form instructions. This action seeks to incorporate into this ICR the Form ETA-9165, with revisions, which is currently approved under the ICR titled “H-2B Foreign Labor Certification Program” (OMB Control Number 1205-0509). This action proposes minor changes to the Forms ETA-9141, ETA-9141, Appendix A, and ETA-9165, and their accompanying instructions. This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA). **DATES:** Consideration will be given to all written comments received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained for free by contacting Brian Pasternak, Administrator, Office of Foreign Labor Certification, by telephone at 202-693-8200 (this is not a toll-free number), TTY 1-877-889-5627 (this is not a toll-free number), or by email at

ETA.OFLC.Forms@dol.gov.

*Instructions:* Submit written comments about, or requests for a copy of, this ICR by email at ETA.OFLC.Forms@dol.gov. To ensure proper consideration, include the OMB control number 1205-0508.

**FOR FURTHER INFORMATION CONTACT:** Brian Pasternak, Administrator, Office of Foreign Labor Certification, by telephone at 202-693-8200 (this is not a toll-free number) or by email to ETA.OFLC.Forms@dol.gov.

**AUTHORITY:** 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** The Department, in its continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and continuing information collections before submitting them to OMB for final approval. This program ensures the public provides all necessary data in the desired format, the reporting burden (time and financial resources) is minimized, collection instruments are written clearly and are easy to understand, and the impact of collection requirements can be properly assessed.

This information collection is required by the Immigration and Nationality Act (INA), sections 203(b)(3); 212(a)(5)(A); 212(m), (n), (p), (t); and 214(c) [8 U.S.C. §§ 1153(b)(3); 1182(a)(5)(A); 1182(m), (n), (p), (t); and 1184(c)]; 8 CFR 204(k)(4)(i) and 214.2(h)(6)(i)(A), (h)(6)(iii)(A), and (h)(6)(iv)(A); and 20 CFR 655.10, 655.731, and 656.40. The INA prohibits the employment of foreign workers under the H-1B, H-1B1, and E-3 nonimmigrant visa classifications unless the Secretary of Labor (Secretary) has approved a Labor Condition Application (LCA) in which the employer attests to pay the foreign worker at least the prevailing wage level for the occupational classification in the area of employment or the actual wage level paid by the employer to workers with similar experience and qualifications for the specific employment in question, whichever

is greater. Similarly, the INA requires the Secretary to certify that the employment of foreign workers in H-2B nonimmigrant and certain immigrant visa classifications will not adversely affect the wages and working conditions of similarly employed workers in the U.S. To render this certification, the Secretary must determine the prevailing wage for the occupational classification and area of intended employment and ensure the employer offers a wage to the foreign worker that equals at least the prevailing wage. The information collection approved under this ICR ensure employers provide information about the job opportunity and terms of employment necessary for the Department to determine prevailing wages for job opportunities in the LCA programs and the H-2B and permanent (PERM) foreign labor certification programs.

Prior to submitting labor certification applications to the Department, employers must obtain a prevailing wage determination (PWD) for their job opportunities from OFLC. Employers seeking to employ foreign workers under the LCA programs are not required to obtain a PWD from OFLC but may choose to do so to ensure the use of an appropriate prevailing wage with an LCA filing. When an employer obtains a PWD from OFLC for a job opportunity under the PERM and LCA programs, the INA requires the Department to determine the appropriate wage level for the occupational classification, “commensurate with experience, education, and the level of supervision.” 8 U.S.C. § 1182(p)(4). When determining a prevailing wage for nonprofit and Governmental research organizations, institutions of higher education, and nonprofit entities related to or affiliated with institutions of higher education, the INA requires the Department to determine the prevailing wage using only wages paid to “employees at such institutions and organizations in the area of employment.” 8 U.S.C. § 1182(p)(1).

The Department uses information provided in the Form ETA-9141 and Form ETA-9141 Appendix A to determine the appropriate occupational classification and prevailing wage rate for that occupation based on information about the nature of the job

offer, such as the area of intended employment, description of job duties, and training and experience requirements. For the H-2B program, the Department uses the Form ETA-9165 to collect information necessary to determine whether an employer-provided survey complies with regulatory requirements and can be used to establish a prevailing wage for the job opportunity in lieu of a prevailing wage determined using the OEWS survey.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection unless OMB, under the PRA, approves it and the collection tool displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The Department seeks a three year extension of OMB approval for the information collection implemented through the Form ETA-9141; Form ETA-9141, *General Instructions*; Form ETA-9141 Appendix A, *Request for Additional Worksite(s)*; Form ETA-9165; and Form ETA-9165, *General Instructions*.

The Department is proposing minor revisions to the Form ETA-9141 and its instructions to clarify several questions on the form and is revising the Form ETA-9141, Form ETA-9165, and corresponding instructions, to replace references to the Occupational Employment Statistics program with references to the Occupational Employment and Wage Statistics (OEWS) program, to reflect that the Bureau of Labor Statistics changed the title of the program in 2021. The Department's revisions to the Form ETA-9141 provide instructions related to mailing applications, clarify when and how an employer should respond to questions about education requirements and non-OEWS PWD requests, and clarify when an employer must provide an "N/A" response to a question and when an employer must provide country information. The Department

also revised Item F.9.b in the Form ETA-9165 so that it requests the number of workers included in the employer-provided survey data set. The Department has determined the proposed minor changes do not impose new information collection or retention requirements and do not impose additional burdens related to existing requirements. Supporting documentation that explains the Department's burden estimates and proposed minor revisions to the information collection instruments is available to the public at <https://www.reginfo.gov/public/do/PRASearch> by entering "1205-0508" in the "OMB Control Number" search function and is available on request using the contact information in the **ADDRESSES** section above.

Interested parties are encouraged to provide comments regarding this ICR, including the proposed minor changes to the collection instruments and the Department's estimates of respondent burdens, to the contact information and instructions in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0508. Submitted comments will be a matter of public record for this ICR and posted on the internet, without redaction. The Department encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements or information in any comments.

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, and the agency's estimates associated with the annual burden

cost incurred by respondents and the government cost associated with this collection of information;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

*Agency:* DOL-ETA.

*Title of Collection:* Application for Prevailing Wage Determination.

*Type of Review:* Revision of a Currently Approved Information Collection.

*OMB Number:* 1205-0508.

*Affected Public:* Individuals or households, private sector (businesses or other for-profit institutions), not-for-profit institutions, Federal government, and state, local, and tribal governments.

*Form(s):* ETA-9141, *Application for Prevailing Wage Determination*; ETA-9141, *Application for Prevailing Wage Determination, General Instructions*; ETA-9141, *Appendix A, Request for Additional Worksite(s)*; ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OEWS Survey*; and ETA-9165, *Employer-Provided Survey Attestations to Accompany H-2B Prevailing Wage Determination Request Based on a Non-OEWS Survey, General Instructions*.

*Total Estimated Number of Annual Respondents:* 102,418.

*Annual Frequency:* On occasion.

*Total Estimated Number of Annual Responses:* 331,339.

*Estimated Time per Response:* Various.

*Total Estimated Annual Burden Hours:* 148,628.36.

*Total Estimated Annual Other Costs:* \$241,513.09.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

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